

**FILE COPY****GOODSILL ANDERSON QUINN & STIFEL**

A LIMITED LIABILITY LAW PARTNERSHIP LLP

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET  
HONOLULU, HAWAII 96813MAIL ADDRESS: P.O. Box 3196  
HONOLULU, HAWAII 96801TELEPHONE (808) 547-5600 • FAX (808) 547-5880  
info@goodsill.com • www.goodsill.comMARTIN ANDERSON  
CONRAD M. WEISER  
DAVID J. REBER  
JOHN R. LACY  
RAYMOND S. IWAMOTO  
THOMAS W. WILLIAMS, JR.  
WILLIAM S. MILLER  
JACQUELINE L.S. EARLE  
LANI L. EWART  
RANDALL K. STEVERSON  
PATRICIA Y. LEE  
GARY M. SLOVIN  
LISA WOODS MUNGER  
ERNEST J. T. LOO  
BRUCE L. LAMON  
PETER T. KASHIWA  
RUSSELL S. KATO  
LANT A. JOHNSON  
VINCENT A. PIEKARSKI  
LEIGHTON J.H.S. YUEN  
CORLIS J. CHANGBARBARA A. PETRUS  
PATRICIA M. NAPIER  
MIKI OKUMURA  
AUDREY E. J. NG  
ALAN S. FUJIMOTO  
WALTER C. DAVISON  
RAYMOND K. OKADA  
GAIL O. AYABE  
DALE E. ZANE  
LINDALEE K. FARM  
CAROL A. EBLEN  
ROY JOHN TJIOE  
KELLIE M. N. SEKIYA  
JUDY Y. LEE  
A. RICHARD PHILPOTT  
LENNES N. OMURO  
DEREK R. KOBAYASHI  
PETER Y. KIKUTA  
THOMAS BENEDICT  
EDMUND K. SAFFERY  
RUSSELL K. KAUPULISA A. BAIL  
CAROLYN K. GUGELYK  
DONNA H. KALAMA  
JOACHIM P. COX  
EVELYN J. BLACKM. ELIZABETH RAXTER  
ANNE T. HORIUCHI BELL  
ROBERT K. FRICKE  
SEAN K. CLARK  
SCOTT G. MORITA  
RANDOLF L. M. BALDEMOR  
LORI M. HIRAKA  
JILL MURAKAMI BALDEMOR  
REGAN M. IWAO  
EMILY REBER PORTER  
DAWN T. SUGIHARA  
PAMELA ANN FONG  
MICHAEL D. ORLANDO  
JOIE M. B. C. YUENLIANN Y. EBESUJAWA  
VALERIE M. IINUMA  
MIHOKO E. ITO  
JENNIFER M. YOUNGCOUNSEL:  
E. LAURENCE GAY  
RICARDO S. GALINDEZ  
KAHBO DYE-CHIEW  
NATALIE S. HIUOF COUNSEL:  
WILLIAM F. QUINN  
GENRO KASHIWA  
RONALD H.W. LUM  
DAVID J. DEZZANIMARSHALL M. GOODSILL  
(1916-2004)

May 2, 2005

**VIA HAND DELIVERY**Lynne T. T. Toyofuku, Esq.  
Nichole K. Shimamoto, Esq.  
Marr Hipp Jones & Wang  
1001 Bishop Street  
1550 Pauahi Tower  
Honolulu, Hawaii 96813**Re: Moffett v. SMF Systems Corporation, et al.**  
**CV No. 03-00130 HG/BMK, United States District Court for the**  
**District of Hawaii**

Dear Counsel:

We are in receipt of your letter of April 22, 2005, and the enclosed "Defendants' Offer of Judgment to Plaintiff John A. Moffett," hereafter referred to as the purported Offer of Judgment or "POJ."

It is Plaintiff's position that the POJ is defective and therefore incapable of acceptance or rejection as an FRCP Rule 68 Offer of Judgment. Among the many defects is Defendants' attempt to impose on Plaintiff as a consequence of rejection of the POJ Defendants' attorneys' fees incurred after the making of the POJ should Plaintiff obtain a judgment not more favorable than the POJ. That consequence is directly contrary to controlling Ninth Circuit law and may not be a condition of a Rule 68 Offer of Judgment. The offer to "withdraw" SMF's "claims" for training reimbursement is also a defect of the POJ.

In addition to the POJ's ineffectiveness as a Rule 68 Offer of Judgment, the substance of the offer itself makes little sense. Even assuming, as you contend, that Plaintiff's special damages for lost wages are limited temporally (a contention with which we do not agree), that damage figure alone using your time period is still in excess of \$40,000, and fails to take into account Plaintiff's other special damages and likely recovery of general damages. Moreover, because your purported Offer of Judgment is inclusive of attorneys' fees and costs, the POJ's \$40,000 figure would be compared not just with Plaintiff's ultimate damage award, but also with the fees and costs award.

COPY SENT TO CLIENT

DATE: 5/2/05INITIALS: jes

947092.1

**EXHIBIT M** *R 5/2/05*  
*hand*

GOC SILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

Lynne T. T. Toyofuku, Esq.  
Nichole K. Shimamoto, Esq.  
May 2, 2005  
Page 2

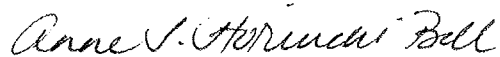
Plaintiff's fees and costs to date already exceed your POJ figure, and continue to mount with trial quickly approaching. Thus, assuming Plaintiff prevails in this case, the likelihood of Plaintiff recovering a total judgment, inclusive of fees and costs, less than the \$40,000 figure you propose, is extremely small.

If you can provide information that justifies your \$40,000 figure, we would be happy to give such information further scrutiny. Otherwise, we believe it is Defendants who should give serious consideration to the possibility of paying substantial fees and costs to Plaintiff in addition to damages.

If you have any questions regarding the foregoing, do not hesitate to contact us.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP



Barbara A. Petrus  
Donna H. Kalama  
Anne T. Horiuchi Bell

BAP/DHK/ATHB